CHAPMAN AND CUTLER LLP

To the Point!

legal, operations, and strategy briefs for financial institutions

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Financial Literacy

The CFPB has established an Office of Financial Education to improve financial literacy as part of its Dodd-Frank mandate to "make markets for consumer financial products and services work for consumers." The CFPB expects to achieve this goal by providing readily accessible information to consumers, including responding to consumer inquiries forwarded to the CFPB, performing research to evaluate and design financial education programs and collaborating with organizations that provide financial education services to consumers.

As part of this initiative, the CFPB conducted a study to identify the amount of money financial institutions spend on advertising products and services compared to the amount spent on financial education by government entities, financial institutions, nonprofit and charitable foundations and others. According to the report, the financial services industry spends approximately $17 billion in marketing to consumers each year while governmental entities and other sources including financial institutions spend approximately $670 million on financial education-a total of $54/person for marketing and $2/person for financial education.

The study noted that of the $160 million financial institutions spend on financial education each year, the majority is spent on supporting services that provide financial education ($129 million) and only the remaining $31 million is spent on direct provision of financial education by the financial institution. In comments announcing the study, Director Cordray stated: "When consumers receive the vast majority of their financial information from companies that are trying to promote an image or sell products, consumers have very little unbiased information." This comment highlights the challenge facing a financial institution that wishes to provide financial education to its customers. Financial institutions should be aware of this perception when developing their financial education programs, clearly separating those from any marketing initiatives.

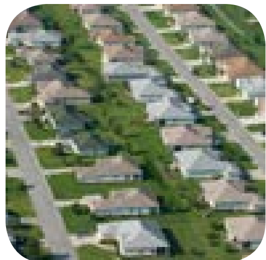
OCC Guidance Regarding Secured Consumer Debt Discharged in Bankruptcy

The OCC recently issued Bulletin 2014-4, clarifying its supervisory expectations for national banks and federal savings associations (collectively, the "banks") regarding secured consumer debt discharged in Chapter 7 bankruptcy proceedings (the "Guidance"). Banks are encouraged to work with delinquent borrowers to provide options to foreclosure and repossession and are reminded that they are responsible for accurately reporting troubled assets in accordance with GAAP.

The Guidance includes the repayment analysis necessary to "clearly demonstrate and document that repayment is likely to occur." Such analysis will include (i) the existence of orderly repayment terms for structured collection of the debt without the existence of undue payment shock or the need to refinance the balloon amount; (ii) a history of payment performance that demonstrates the borrower's ongoing commitment to satisfy the debt; and (iii) the consideration of post-discharge capacity to make future required payments. If the analysis supports the determination that repayment is likely to occur, immediate charge-off of amounts exceeding collateral value is not required.

The Guidance also describes the collectability analysis to be applied when a bank receives post-discharge payments and this performance demonstrates both capacity and willingness to repay the full amounts due. Such analysis will include

(i) monthly payment of both principal and interest that fully amortizes the remaining debt; (ii) sustained performance demonstrating ongoing capacity and willingness to repay post-discharge; and (iii) collateral levels that indicate the bank is likely to recover the full amount due even if payments cease. The analysis may be performed at an individual or pool level. If such analysis supports the determination that the bank expects repayment of the remaining contractual principal and interest, the bank may return the loan to accrual status.



Mortgage Rules Update

In a recent speech before the Mortgage Bankers Association, Steven Antonakes, the CFPB's Deputy Director, focused on the mortgage servicing industry, criticizing the industry for its lack of progress since the beginning of the financial crisis. This lack of progress is measured, he said, by the large number of consumer complaints the CFPB continues to receive each month and the problems the CFPB's examiners continue to find. He identified mortgage servicing transfers as a focus of the CFPB's attention and noted that the CFPB would not tolerate situations where it finds new servicers failing to honor existing permanent or trial loan modifications.

As to enforcement, he noted that the CFPB has published numerous training materials to assist servicers and stated that mortgage servicers have had more than one year to work on implementation of the new rules. He asserted that the CFPB would be "vigilant about overseeing and enforcing these rules."

The CFPB has published a bulletin about its expectations regarding mortgage servicing transfers and recently updated its mortgage origination and mortgage servicing examination procedures. Based on this newly articulated enforcement posture, we again recommend that servicers become familiar with both the bulletin and the examination procedures, which are the standards by which their conduct will be measured. In addition, financial institutions should document their due diligence with any third party servicer to verify compliance with mortgage servicing and transfer guidelines.

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